THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 18454 of 2002

Date: .09.2005

Between:

Pradeep Kumar Singh, s/o. Akhilesh

Prasad Singh, r/o. Chandpura vil. & post,

Via Bidupur R.S., Viyshali-844502, Bihar state.

…Petitioners

and

1)The Union of India rep. by its Chief of the Naval

Staff, Naval Head quarters, New Delhi & two others

…Respondents

ORDER:

Challenging the order of the third respondent dated 14.05.1999 in GX No.1595/99 imposing rigorous imprisonment for 90 days and dismissal from service and deprivation of Good Conduct Badge, the present Writ Petition is filed.

The brief facts required for disposal of this Writ Petition are as follows:

The petitioner was appointed as Mechanical Engineer-I in Naval Service in the year 1995; he was awarded First Good Conduct Badge; he was on duty at Volna Tower on Dolphins Nose Hill at Visakhapatnam from April, 1998; on 29.12.1998 at about 18.00 hrs, he went to O.P. Pandey's quarters informing his colleague Mr. H.Singh, to collect uniform items to get ready for Muster Call on 31.12.1999; after collection of the uniform, he could not reach the Volna tower and so, he informed Mr. Singh on telephone that he could not come there as he had to give urine and blood samples at I N S VEERA BANU, and took shelter in the house of Mr. Pandey; when he was about to leave the quarters early in the morning, Mr. Pandey came there and suspected that the petitioner had illicit intimacy with his wife and gave a complaint against the petitioner; the investigation conducted thereon by the Regulating Officer revealed no case against the petitioner; but, the Unit Regulating Officer started investigating the case again recording statements of the witnesses including the complainant Mrs. Kiran Pandey, who categorically stated that she had no illicit intimacy with the petitioner and upon pressure by her husband, she wrote whatever dictated by him; the petitioner was also forced by his unit officer to confess about the intercourse; thereafter, the Officer gave a false report stating that a *prima facie* case is against the petitioner; summary enquiry was conducted against the petitioner; but no prime witness was examined in his presence nor was he served with any charge sheet, and that he was not given any opportunity to cross-examine the witnesses; on 14.05.1999, an order was served on the petitioner awarding punishment of a)rigorous imprisonment for 90 days; b)dismissal from naval service; and c)deprivation of First Good Conduct Badge; It is further stated that the said order did not contain any reasons; that after serving the sentence, he filed C.W.J.C. No.7350 of 1999 in Patna High Court, which was withdrawn by him on the point of jurisdiction, with a liberty to file before this Court; hence, the Writ Petition.

The respondents filed counter affidavit denying the averments in the affidavit and stating that on that day, he was not supposed to desert his place of duty without prior permission, which is a serious offence under Section 41(a) of the Navy Act, 1957; when the petitioner was caught by Mr. Pandey and questioned about his presence in the quarter, he ran away and bolted the door from outside; that on receipt of complaint, Lieutenant Satish Kumar was appointed to conduct enquiry and basing on his report, the petitioner was charged for the offences; the case was investigated by Lieutenant Commander (SDREG) Yd Singh, Regulating Officer as per Rules; every opportunity was given to the petitioner during the enquiry; the details of summarily trial charge sheet and punishment awarded is recorded on punishment warrant which was publicly read out to the petitioner in the presence of all other Sailors of the unit; as per provisions of the Navy Act, 1957 and Regulations made thereunder, the Commanding Officer is empowered to impose punishment of imprisonment, dismissal from Naval Service and deprivation of Good Conduct Badge; hence, the writ petition is liable to be dismissed.

Learned counsel for the petitioner contended that no charge sheet was served on the petitioner and no enquiry as contemplated under the Rules was conducted; that no opportunity was given to the petitioner to cross-examine the witnesses examined during the course of enquiry; that nobody represented the petitioner to defend him during the enquiry; that during the enquiry, the petitioner was in the custody; that the findings of the Enquiry Officer are perverse and not based upon any evidence; that there was no reference with regard to preliminary enquiry; that when a person is holding a Good Conduct Badge, he can not be tried summarily; that Regulation 37 of the Naval (Discipline Miscellaneous Provisions) Regulations, 1965 has been totally violated; when a person is tried summarily, the order of dismissal shall be given by the Chief of the Naval Staff; therefore, he prays to allow the Writ Petition.

On the other hand, the learned Assistant Solicitor General appearing for the respondents contended that all the witnesses were examined in the presence of the petitioner and a reasonable opportunity was given to him to cross-examine the witnesses; the contents of the charge sheet were read over to the petitioner and his defending officer; details of the summary trial charge sheet and punishment awarded was recorded on the punishment warrant; that the Commanding Officer is the authority, who can impose punishment; one Aditya Minhas, who is the defending officer to the petitioner was present; no trial was conducted in the absence of the petitioner; hence, he prays to dismiss the Writ Petition.

The law is well settled that over the proceedings and the decisions taken in the administrative matters, scope of judicial review is confined to decision making process and does not extend to the merits of the decision taken. While examining and scrutinizing the decision making process, it becomes inevitable to also appreciate the facts of a given case as otherwise the decision can not be tested under the grounds of illegality or procedural impropriety. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the disciplinary authority. It is also equally settled that this Court can not sit as a Court of appeal over the decision based on the findings of Enquiry Officer in disciplinary proceedings. Where there is some relevant material, which the disciplinary authority has accepted and which material reasonably supports the conclusions reached by the disciplinary authority, it is not the function of this Court to review the same and reach a different conclusion. It is equally well settled that if the findings recorded by the disciplinary authority are found to be perverse, which are not based upon the legal evidence, then this Court is empowered to treat such flaw as a legal flaw and quash the impugned action. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. The findings of the disciplinary

authority can not extend to the reexamination of all the evidence to decide the correctness of the charge.

A finding is perverse if it is passed based upon no evidence whatsoever or if it is based on mere suspicion, since a mere suspicion should not be allowed to take the place of proof even in domestic enquiry. The evidential material must be such that it amounts to guilt of employee in respect of the charge against him with some degree of definiteness. The conclusions must be based on existent and relevant material. But, mere nonconsideration of some evidence will not amount to perversity. The Court will, however, interfere if a finding is based on misreading of the material evidence or is so unreasonable or grossly unjust that no reasonable person could judicially arrive at such conclusion. The factual findings of the disciplinary authority are, however, not open to challenge and the power of judicial review does not extend to examining the correctness or truth of the charges.

The first ground of attack of the order of the disciplinary authority is that no charge sheet was served on the petitioner. A detailed counter affidavit has been filed by the respondents stating that there is no provision under the Navy Act, 1957 or under any Regulations governing the service conditions of the employees of Navy, to serve charge sheet to the accused during the summary trial. But, it is stated that the contents of the charge sheet are read over on the defaulter table in the presence of the accused and his defending officer.

Regulation 37 of the Naval (Discipline Miscellaneous Provisions) Regulations, 1965 (for short, 'the Regulations, 1965') govern the procedure for conducting disciplinary action. Regulation no. 7 thereof provides that the Commanding Officer may summarily try and punish any offence triable under the Act committed by a Sailor, other than a capital offence and may, subject to the provisions of these

regulations, award the several punishments specified in Regulation 13. The Regulation no.7 is subject to the following three limitations.

a. If the offence is alleged to have been committed by a sailor who is entitled under these regulations to elect trial by court martial, the procedure described in these regulations therefore shall be followed;

b. Except as provided in regulation 37, a Chief Petty Officer, a Petty Officer, a Sailor holding a leading rank or a sailor holding a good conduct badge shall not be summarily sentenced to imprisonment or detention;

c. A Commanding Officer shall not try summarily an offence where the Chief of the Navy Staff has by general or special order directed that it shall be dealt with by court martial.

It is contended by the learned counsel for the petitioner that the petitioner is holding a good conduct badge and therefore, by virtue of Regulation 7(b), he can not be tried summarily. Regulation 35 provides for individual punishments of imprisonment and detention. Regulation 36 provides for restriction in case of certain Sailor. Regulation 36(2) reads as follows:

> "Chief Petty Officer and Petty Officers who can not be reduced to lower rank, leading sailors and below wearing Good Conduct Badges shall not be sentenced summarily to imprisonment of detention except for the following offences, namely:-

a. Highly insubordinate conduct;

b. Desertion or deserting post;

c. Sleeping on watch;

d. Indecent acts of an immoral character;

e. Theft of fraud; etc."

Therefore, if the Sailor commits an act of immoral character or deserts the post or of highly insubordinate conduct, then he can be tried summarily even though having good conduct badge. Therefore, the contention of the learned counsel for the petitioner that since the petitioner was holding a good conduct badge, he can not be tried summarily is of no consequence and it is only untenable.

The next contention of the learned counsel for the petitioner is that the petitioner was not only imposed punishment with regard to misconduct, but also imprisonment, which is unknown to service law since it is only a disciplinary proceedings. The learned counsel further contended that the approval from the Chief of the Naval Staff as required under Regulations 15(1) and 37(4) of the Regulations, 1965, was not obtained for the punishment awarded to the petitioner,

In public service, the disciplinary action is taken after initiating and completing disciplinary proceedings. The entire procedure for initiation and conclusion of disciplinary proceedings and the power to impose appropriate punishments, are generally governed by the relevant Rules and Regulations. Therefore, it is to be seen whether two punishments viz. one dismissal from service and another sentencing him to undergo imprisonment for a period of 90 days, can be imposed.

Regulation 13 deals with punishment that can be imposed when a Sailor is tried summarily. It provides, *inter alia,* imprisonment for a period not exceeding three months; dismissal from naval service, etc. Regulation 15(1) provides dismissal from naval service and in case if it accompanies any other punishment, the whole of the punishment proposed to be awarded shall require the approval of the Chief of the Naval Staff.

Regulation 37(4) provides that an order for dismissal of a person from

naval service, whether accompanied by other punishments or not, shall be made only by the Chief of the Naval Staff and no punishment shall be inflicted on such person until a decision has been obtained on the question whether such person should be dismissed from naval service or not.

As seen from the letter dated 28.05.1999 of the Lieutenant Commander addressed to the Commanding Officer, INS Circars, it is clear that approval from the Chief of the Naval Staff for imposition of the punishments viz. (i) 90 (ninety) days rigorous imprisonment; (ii) dismissal from naval service; and (iii) deprivation of the I GCB, has been taken. The letter from the Naval Headquarters dated 18.05.1999 would clearly go to show that the punishment warrant in respect of Pradeep Kumar, ME I No.116956 has been approved by the Chief of the Naval Staff for the punishments viz. (a) (Ninety) 90 days rigorous imprisonment; (b) dismissal from naval service; and (c) deprivation of first good conduct badge. All the above documents remained unchallenged. Therefore, the respondents made available copy of the approval of the approval of the Chief of the Naval Staff in respect of imposition of the punishment on the petitioner. Since the procedure contemplated under the Regulations has been fully complied with, the contention of the learned counsel for the petitioner that the approval of the Chief of the Naval Staff has not been taken, holds no water and is totally devoid of merits.

The other contention of the learned counsel for the petitioner is that the Enquiry Officer gave perverse findings; copies of the preliminary enquiry report were not made available to the petitioner and the findings are based upon no evidence.

The charges levelled against the petitioner are as follows:

1. Did at about 18.00 hours on the twenty ninth day of December 1998 desert his post namely Volna Tower Sentry and thereby committee an offence punishable under Setion 41(a) of the Navy Act, 1957.

2. Was between 23.00 hours on the day of twenty ninth December 1998 and 05.00 hours on the thirtieth day of December 1998 guilty of an act to the prejudice of good order and naval discipline in that he unauthorisedly slept in quarter number AH-12 Nausena Baugh, Visakhapatnam, the residence of Om Prakash Pandey, Electrical Mechanician (Power) 3rd class number 114172-H and thereby committee an offence punishable under Section 74 of the Navy Act, 1957;

3. Did between 23.00 hours on the twenty ninth day of December 1998 and 05.00 hours on the thirtieth day of December 1998 have sexual intercourse with Smt. Kiran Pandey in quarter no. AH-12, Nausena Baugh, Visakhapatnam, knowing to be the wife of OM Prakash Pandey, Electrical Mechanician (Power), 3rd class, Number 114172-H without the consent of her husband OM Prakash Pandey, Electrical Mechanician (Power) 3rd class Number 114172-H and thereby committed an offence of adultery punishable under Section 497 of the Indian Penal Code read in conjunction with Section 77(2) of the Navy Act, 1957."

It is to be seen whether the findings of the Enquiry Officer are perverse, or not based upon any evidence. It is clear from the statement of Smt. Kiran Pandey recorded by the investigating officer that the petitioner came to the quarter AH-12 on 29.12.1998 at about 11.00 PM, and at about 02.30 hours on 30.12.1998 she went to the room of the petitioner. She also stated that she had a sexual relation with the petitioner. But, the learned counsel for the petitioner contended that it is a statement given by Smt. Kiran Pandey out of fear and threat because her husband slapped her. It is seen from the statement that her husband slapped her and asked her to tell the truth as to what relationship she was having with the petitioner and she accepted that she had sexual relation with him. This is not a statement by coercion or intimidation or under threat. Even assuming that her husband slapped her, it is only to tell the truth. Even the said statement is excluded from consideration, still it is reasonable to infer that she was having extra marital relation with the petitioner since her

husband was not present in the house during the night when the petitioner stayed there. Therefore, the charge levelled against the petitioner is based upon some evidence on record. As already stated, it is not for this Court to reappreciate the evidence, whether it is sufficient or not.

The learned counsel for the petitioner contended that only two persons were posted at Volna Tower round the clock and that one of them may leave the towers for the purpose of taking meal, etc. and mere absence at the tower by itself is not a ground for desertion. The contention of the learned counsel on this aspect has no factual foundation. The petitioner was supposed to be at the towers for security reasons. He was not supposed to leave the towers without prior permission from the competent officer. The evidence available shows that the petitioner left the towers to go to the quarter of Mr. Pandey without prior permission, and not to attend his regular way of life such as bathing, taking food, answer calls of nature, etc. In the absence of any evidence on record, the contention of the learned counsel can not accepted.

The other contentions that no allegations in writing were served on the petitioner; that no opportunity of defending his case or to cross-examine the witnesses was given; that the statements of Smt. Kiran Pandey, which were given at the earliest point of time, have been suppressed, can not be accepted in view of the fact that in the counter affidavit, it is specifically stated that the allegations in the charge sheet have been read over on the defaulter table in the presence of the accused and his defending officer, and all the documents were supplied to him. It is also categorically stated in the counter affidavit that the petitioner was also given opportunity to cross-examine the witnesses and no proceedings were conducted in the absence of the petitioner; that the petitioner was present and the divisional officer Lieutenant Aditya Minhas was present throughout

the entire investigation.

Regulation 92 of the Regulations, 1965 provides for naval custody till completion of investigation. Therefore, as contended by the learned counsel appearing for the respondents, principles of natural justice have been followed in giving reasonable opportunity to the petitioner and hence, there is no procedural impropriety or illegality in conducting the disciplinary enquiry. Therefore, from the aforesaid reasons, the impugned proceedings dated 14.05.1999 of the third respondent are not vitiated by any error of law or procedural impropriety so as to call for interference by this Court.

The charges levelled against the petitioner are very serious in nature, among which one relating to complete absence of petitioner at vulnerable point in night shift, and at the same time, his conduct in going to the house of wife of another employee in the absence of her husband, which is a serious misconduct warranting severe punishment. Discipline is required to be maintained at all levels in all armed forces. When a member of the armed forces is not devoted himself to the duty and left the place of his duty without prior permission from the competent officer, that too for fulfilling his lust, such a person can not be continued in service. Hence, the punishment imposed by the disciplinary authority is proportionate to the proved misconduct.

The Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

.09.2005

DRK